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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/560,312	12/09/2005	Izumi Usuki	P28954	4988
52123 7590 02/02/2009 GREENBLUM & BERNSTEIN, P.L.C. 1950 ROLAND CLARKE PLACE RESTON, VA 20191				
EXAMINER INGVOLDSTAD, BENNETT				
ART UNIT 2427		PAPER NUMBER		
NOTIFICATION DATE 02/02/2009		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/560,312

Applicant(s)

USUKI ET AL.

Examiner

Bennett Ingvaldstad

Art Unit

2427

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 October 2008.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 12-19 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 12-19 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 27 October 2008 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. The previous claims are canceled and the new claims filed 27 October 2008 are entered. The amended drawings filed 27 October 2008 are accepted.

Response to Arguments

2. Applicant's arguments filed 27 October 2008 are moot in view of the new rejections to the new claims.

Claim Rejections - 35 USC § 101

3. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

4. Claims 12-16 and 18 are rejected under 35 U.S.C. 101 as not falling within one of the four statutory categories of invention. While the claims recite a series of steps or acts to be performed, a statutory "process" under 35 U.S.C. 101 must (1) be tied to particular machine, or (2) transform underlying subject matter (such as an article or material) to a different state or thing. See page 10 of In Re Bilski 88 USPQ2d 1385. The instant claims are neither positively tied to a particular machine that accomplishes the claimed method steps nor transform underlying subject matter, and therefore do not qualify as a statutory process. The method of claim 12 includes the steps of generating and transmitting a transmission stream, which are broad enough that the claim could be

completely performed mentally or without a particular machine. Nor is any transformation apparent. The method of claim 18 includes the steps of receiving said transmission stream, extracting said third stream..., and presenting said third stream. These steps similarly are not tied to a particular machine nor do they provide a transformation.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 12-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over WIPO Pub. No. WO 03/073753 (hereinafter "Yamaguchi") in view of US PG-Pub. No. 2001/0005374 (hereinafter "Kumazaki").

Considering claim 12, Yamaguchi teaches a transmission method comprising "generating a transmission stream through multiplexing of a first stream having data of a first service" (stream A1-A3 in Figs 6C-D), a second stream having data of a second service (stream B1-B3 in Figs 6C-D), and a third stream having data related to the first service and data related to the second service (zapping data streams LMN or XYZ in Figs 6C-D containing information related to content streams A, B, C – pg. 30, l. 13 – pg. 31, l. 7)." The transmitted stream "has such a structure that a first burst for transmitting the first stream and a second burst for transmitting the second stream are located

periodically in said transmission stream" in light of Applicant's amended Figure 15, in which a "burst" appears to be a sequence of packets related to the same content. Therefore sequences A1-A3, B1-B3, and C1-C3 of Figs 6C-D are considered to be bursts.

However, Yamaguchi does not teach the third stream being carried in said first burst and also in said second burst; rather, the third stream is in between the bursts as in Figs 6C-D.

Kumazaki teaches a multiplexing method for multiple time-division multiplexed streams A, B, and C (Fig. 8) comprising multiple packets in which a third stream may be carried in a first burst and in a second burst. Fig. 14A shows a first stream of A1 packets which is followed by a second stream of B1-B3 packets, the B stream subsequently followed by a third stream of C1 packets. The A stream then resumes with A2 packets, followed by the B stream with B4-B10 packets, etc. The A1-A2 sequence is considered to be a first burst and the B1-B10 sequence is considered to be a second burst in keeping with Applicant's Figure 15 and Yamaguchi's Figs 6C-D. Therefore it is seen that the C1 packets are "carried in" the A and the B bursts by virtue of being in between the beginning and the end of each burst.

It is obvious to substitute one known element for another to achieve predictable results. Therefore, it would have been obvious to have substituted the multiplexing scheme of Yamaguchi for the multiplexing scheme of Kumazaki, thus achieving the predictable result of delivering the packets in a different order such that the third zapping data stream is carried in the bursts of the first and the second streams.

Considering claim 13, Yamaguchi further teaches the first and second data being high quality content data (program content data – pg. 30, l. 1-4) and the third zapping data related to the first and second data being lower quality data (pg. 6, l. 4-8).

Considering claim 14, Yamaguchi further teaches the high quality content data being program data comprising audio and video (television broadcast programs -- pg. 1).

Considering claims 15 and 16, Yamaguchi further teaches the zapping data comprising images, audio, and/or text (pg. 6, l. 4-8).

Independent claim 17 is met as discussed above, the transmitter further comprising a multiplexer operable to generate the previously discussed transmission stream (Yamaguchi, pg. 7, l. 19 – pg. 20, l. 9).

Independent claim 18 is met as discussed above, the system further comprising a receiver operable to receive the multiplexed stream “partially and selectively” such that only a single program channel is displayed (pg. 5, l. 15-26), extract the third zapping stream and store it (pg. 5, l. 23-34), and present the third zapping stream “when the service recipient alters the receiving service from the first service presented by the first burst to the second service presented by the second burst, or vice versa”, i.e. after the displayed program is changed (pg. 5, l. 24-26).

Considering claim 19, the receiving apparatus is met as discussed for claim 18.

Conclusion

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Bennett Ingvaldstad whose telephone number is (571)270-3431. The examiner can normally be reached on M-F 9-5 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Scott Beliveau can be reached on (571) 272-7343. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Bennett Ingvaldstad/
Examiner, Art Unit 2427

/Scott Beliveau/
Supervisory Patent Examiner, Art Unit 2427